

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* GLENNIS J. ORLOFF and BRIAN BALISTEE

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Appeal No. 2006-0810  
Application 09/626,193

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ON BRIEF

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Before FRANKFORT, OWENS and LEVY, *Administrative Patent Judges*.  
OWENS, *Administrative Patent Judge*.

*DECISION ON APPEAL*

This appeal is from a rejection of claims 64, 67-69, 85-87 and 116-118. Claims 65 and 66 have been canceled, and claims 1-63, 70-84 and 88-115 have been withdrawn from a consideration by the examiner.

#### *THE INVENTION*

The appellants claim a hair removal device comprising at least 100 micro-blades. Claim 64 is illustrative:

64. A hair removal device comprising:

a substantially planar and rigid substrate; and

at least 100 micro-blades connected to said substrate,

wherein the micro-blades are configured for cutting hair when drawn across a skin surface and without damaging the skin.

#### *THE REFERENCES*

Sturtevant et al. (Sturtevant)      5,100,506      Mar. 31, 1992

#### *THE REJECTIONS*

The claims stand rejected over Sturtevant as follows: claims 64, 67, 86 and 87 as anticipated under 35 U.S.C. § 102(b); claims 68 and 69 as obvious under 35 U.S.C. § 103; and claims 85 and 116-118 as anticipated under 35 U.S.C. § 102(b) or, in the alternative, as obvious under 35 U.S.C. § 103.

#### *OPINION*

We affirm the aforementioned rejections. The appellants argue only claim 64, which is the sole independent claim, and claim 116. Consequently, we limit our discussion to those

claims. See 37 CFR § 41.37(c)(1)(vii)(2004).<sup>1</sup>

Sturtevant discloses a method for chemically machining sheet metal to form teeth for cutting and abrading tools (col. 1, lines 7-11). The disclosed sheet metal thickness is from about 0.002 to about 0.02 inch (col. 5, lines 15-17). Areas of the sheet metal are covered by etching resistant material, and the exposed areas are subjected to etching to form many teeth having cutting edges (col. 6, line 64-col. 7, line 16; figure 5). Selected teeth are bent above the sheet metal surface (col. 7, lines 16-25). "The cutting edges of the tooth shapes are razor sharp, without the necessity of grinding or honing" (col. 8, lines 5-7). The cutting tools are useful "as sheet metal cutting tools including circular and linear wood cutting saw blades, micro-planning blades for hand tools and micro-planning blades for power tools" (col. 8, lines 8-11).

The appellants argue that their specification (page 9, lines 1-3) defines "micro-blades" as "blades comprising at least one edge having a radii of curvature not greater than about 1000 angstroms" (brief, page 5; reply brief page 2). The appellants'

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<sup>1</sup>The appellants' argument (brief, pages 3-4 and 6-7; reply brief pages 3-6) regarding non-entry of a proposed amendment is a petitionable matter, not an appealable matter, and therefore, is not before us. See 37 CFR § 1.127(2004).

specification, however, also states that the micro-blades are not limited to any specific shape, can have curved or straight surfaces, and can be hexagonal, triangular, rectangular, or any other geometric shape" (page 11, lines 5-9). Hence, the term "micro-blades", given its broadest reasonable interpretation in view of the appellants' specification, see *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989); *In re Sneed*, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983), encompasses Sturtevant's tooth shapes. Sturtevant's disclosure that the tooth shapes are useful as micro-planing blades (col. 8, lines 10-11) further indicates that the tooth shapes reasonably can be considered to be micro-blades.

The appellants argue that Sturtevant's tooth shapes cannot be realistically used as hair removal devices (brief, page 5). Sturtevant's disclosure that the cutting edges of the shapes are razor sharp (col. 8, lines 5-6) indicates that they are capable of cutting hair. See *In re Schreiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997).

The appellants argue, with respect to claim 116, that Sturtevant does not disclose a blade support attached to generally flat substrate and extending above the substrate surface, and a blade having a cutting edge (brief, page 6).

Sturtevant's figure 5 shows a generally flat substrate, a tooth portion extending above the substrate surface (which corresponds to the appellants' blade support), and a blade having a cutting edge (57) at the end of the blade support.

The appellants argue that Sturtevant's blades are capable of removing skin to which hair may be attached, but cannot remove hair itself (brief, page 8). Sturtevant's disclosure that the blades' cutting edges are razor sharp (col. 8, lines 5-6) indicates that they are capable of cutting hair. Thus, if such razor sharp micro-blades were drawn across a skin surface with only a slight clearance or minimal contact between the blades cutting edges and the skin surface the micro-blades would cut any hair they come in contact with and do so without damaging the skin.

The appellants argue that Sturtevant is nonanalogous art (brief, page 7; reply brief, page 3). The test of whether a reference is from an analogous art is first, whether it is within the field of the inventor's endeavor, and second, if it is not, whether it is reasonably pertinent to the particular problem with which the inventor was involved. See *In re Wood*, 599 F.2d 1032, 1036, 202 USPQ 171, 174 (CCPA 1979). A reference is reasonably pertinent if, even though it may be in a different field of

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endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering the inventor's problem. See *In re Clay*, 966 F.2d 656, 659, 23 USPQ2d 1058, 1061 (Fed. Cir. 1992).

Sturtevant's disclosure of using chemical etching to form razor sharp cutting edges for micro-planing blades (col. 2, lines 34-52; col. 8, lines 5-10) is reasonably pertinent to the problem addressed by the appellants of using chemical etching to form sharp micro-blade edges for cutting hair (specification, page 23). Sturtevant, therefore, is analogous art.

For the above reasons we are not convinced of reversible error in the examiner's rejections.

#### DECISION

The rejections over Sturtevant of claims 64, 67, 86 under 35 U.S.C. § 102(b), claims 68 and 69 under 35 U.S.C. § 103, and claims 85 and 116-118 under 35 U.S.C. § 102(b) or, in the alternative, 35 U.S.C. § 103, are affirmed.

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No time period for taking any subsequent action in  
connection with this appeal may be extended under 37 CFR  
§ 1.136(a)(1)(iv).

*AFFIRMED*

  
CHARLES E. FRANKFORT  
Administrative Patent Judge

  
TERRY J. OWENS  
Administrative Patent Judge

  
STUART S. LEVY  
Administrative Patent Judge

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